REMARKS

The Examiner has rejected Claims 1, 2, 4, 7, 10-12, 14, 17, 20-22, 24, 27, 30-32, 34, 37, and 40-44 under 35 U.S.C. §103(a) as being unpatentable over Eglen (U.S. Publication No. 2003/0023505), in view of Hurtta (U.S. Patent No. 7,330,711). Applicant respectfully disagrees with such rejections, especially in view of the amendments made hereinabove to the independent claims.

With respect to independent Claims 1 and 11, the Examiner has relied on Paragraph [0162] from the Eglen reference (excerpted below) to make a prior art showing of applicant's claimed "inputting said license key at said user computer" (see this or similar, but not necessarily identical language, in each of the aforementioned claims). Specifically, the Examiner has argued that "in order to authenticate the ticket's serial number, the serial number has to be provided by the user, as the user is using their computer to download software, the serial number has to be input on their computer."

> "As should be appreciated the above-discussed dynamic pricing system 102 can be used to dynamically price other types of items. These items can include, but are not limited to, movie tickets; concert tickets; CD's containing selected songs; DVD's; artist memorabilia, such as t-shirts and the like; and video rental coupons. The coupons and tickets can be downloaded from the dynamic pricing system 102 and/or physically delivered to the customer. When a ticket or coupon is downloaded, the customer can print the ticket out with the printer 125. To prevent forgery, the tickets and coupons can contain authentication information, such as a unique serial number, bar code and/or design. Artist memorabilia for example can be physically delivered to the customer or the customer can download a coupon that can be redeemed at a local store in order to receive the memorabilia. Likewise, a CD containing selected songs and/or albums can be mailed to the customer or a coupon for the CD can be redeemed at a local store." (Paragraph [0162] - emphasis added)

Applicant respectfully disagrees and asserts that the excerpt relied on by the Examiner merely discloses that "[w]hen a ticket or coupon is downloaded, the customer can print the ticket out with the printer 125" and that "[t]o prevent forgery, the tickets and coupons can contain authentication information, such as a unique serial number, bar code and/or design" (emphasis added). However, simply teaching that a ticket containing

authentication information may be printed when the ticket is downloaded, as in Eglen, does <u>not</u> meet, or even suggest, "<u>inputting</u> said license key <u>at said user computer</u>" (emphasis added), as applicant claims. Applicant respectfully points out that Eglen only teaches that the ticket may include "movie tickets...[or] concert tickets." Thus, there simply would be no reason in Eglen for the user to input the license key, in the context claimed by applicant, particularly since the licence key in Eglen would be provided to the user <u>on the **downloaded** ticket</u>, where the ticket would include a movie ticket or a concert ticket.

Further, in response to the Examiner's statement that "in order to authenticate the ticket's serial number, the serial number has to be provided by the user, as the user is using their computer to download software, the serial number has to be input on their computer," applicant respectfully asserts that Eglen only teaches that the ticket includes "movie tickets" or "concert tickets" (see Paragraph [0162]), and <u>not</u> that the ticket is for downloading software, as suggested by the Examiner. In addition, Eglen only discloses that the <u>downloaded</u> ticket contains the serial number (see excerpt above), which does not even suggest, and even *teaches away* from, the Examiner's suggestion that "in order to authenticate the ticket's serial number, the serial number has to be provided by the user, as the user is using their computer to download software, the serial number has to be input on their computer."

Based on the Examiner's aforementioned argument, it appears that the Examiner has relied on an inherency argument regarding the above emphasized claim limitations. In view of the arguments made hereinabove, any such inherency argument has been adequately rebutted, and a notice of allowance or a specific prior art showing of such claim features, in combination with the remaining claim elements is respectfully requested. (See MPEP 2112)

Additionally, in response, applicant asserts that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d

1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

With respect to independent Claims 21 and 31, the Examiner has again relied on Paragraph [0162] from the Eglen reference to make a prior art showing of applicant's claimed "receiving a licence key input by a user at said user computer, said licence key being borne by a licence ticket obtained by a user" (see this or similar, but not necessarily identical language, in each of the aforementioned claims).

Applicant again respectfully asserts that the excerpt from Eglen relied on by the Examiner simply teaches that a ticket containing authentication information may be printed when the ticket is downloaded, which does not meet, or even suggest, "receiving a licence key input by a user at said user computer, said licence key being borne by a licence ticket obtained by a user" (emphasis added), as applicant claims. Applicant respectfully points out that Eglen only teaches that the ticket may include "movie tickets...[or] concert tickets." Thus, there simply would be no reason in Eglen for the user to input the license key, in the context claimed by applicant, particularly since the licence key in Eglen would be provided to the user on the downloaded ticket, where the ticket would include a movie ticket or a concert ticket.

With respect to independent Claims 1 and 11, the Examiner has relied on path 250 to 254 to 262 in Figure 2 of Eglen to make a prior art showing of applicant's claimed "transmitting said licence key from said user computer to said download source computer via said computer network connection" (see this or similar, but not necessarily identical language, in each of the aforementioned claims).

Applicant respectfully asserts that the path in Figure 2 of Eglen relied on by the Examiner simply shows a user computer 108 sending a request 250 to a connection server 202 and the connection server 202 forwarding on the request 254 to navigation servers 204 which further forward on a file name 262 to file servers 210. In fact, applicant respectfully notes that Paragraph [0062] from Eglen merely discloses that "[a]ll requests, such as a web page requests, from the client 108 (as indicated by arrow 250 in FIG. 2) are routed to the connection server 202" which "routes the request, as indicated by arrows 252 and 254, to the navigation server 204 with the lowest load" where "[t]he navigation server 204...processes a purchase/download request from the client by sending the requested file name to the home file server 210 for the particular file, which is indicated by arrow 262" and "the file server 210 transfers the file to the client 108."

However, simply sending a purchase/download request from a client to a navigation server via a connection server, where the navigation server processes the purchase/download request by sending the requested file name to a home file server, as in Eglen, fails to even suggest "transmitting said licence key from said user computer to said download source computer via said computer network connection" (emphasis added), as applicant claims. Applicant respectfully emphasizes that the Examiner has relied on the authentication information in Paragraph [0162] of Eglen to meet applicant's claimed licence key (see the Examiner's rejection of applicant's claimed "licence key"). However, the authentication information is only on a ticket **downloaded by a user** (see Paragraph [0162]). Thus, sending a purchase/download **request** from a client where the requested file name is sent to a home file server, as in Eglen, simply cannot meet applicant's claimed "transmitting said licence key from said user computer to said download source computer via said computer network connection" (emphasis added), as applicant claims, particularly since the user in Eglen would only know of the licence key after the download of the ticket.

With respect to the independent claims, the Examiner has relied on Col. 6, lines 58-65 in Hurtta to make a prior art showing of applicant's claimed technique "wherein receipt of said data indicating sale of said licence ticket triggers said supplier of said

computer program product to charge said seller for a licence to use said computer program product" (see this or similar, but not necessarily identical language, in each of the aforementioned claims).

Applicant respectfully asserts that the excerpt from Hurtta relied on by the Examiner simply teaches that "the PS charging function receives, from the SGSN, a message triggering online charging and, based on the message, in step 302 a normal charging instruction associated with online charging of the GPRS is sent to the SGSN, for instance 'Apply Charging GPRS', on the basis of which the SGSN sends charging data to the PS charging function CF1." Thus, the excerpt merely discloses that a SGSN sends a message triggering online charging to a PS charging function, where based on such message a normal charging instruction is sent to the SGSN, and where based on such charging instruction the SGSN sends charging data to the PS charging function.

Clearly, simply transmitting a message triggering charging, and receiving a charging instruction in response, where charging data is transmitted responsive to the charging instruction, as in Hurtta, fails to specifically teach that "receipt of said data indicating sale of said licence ticket triggers said supplier of said computer program product to charge said seller <u>for a licence to use said computer program product</u>" (emphasis added), as claimed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest <u>all</u> of the claim limitations, as noted above. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has amended the independent claims as follows:

"validating said licence key sent to said download source computer<u> based on said transmittal of said licence key, utilizing said download source computer</u>" (see this or similar, but not necessarily identical language, in Claims 1 and 11);

"validating said licence key sent to said download source computer<u> based on receipt of said licence key at said download source computer, utilizing said download source computer</u>" (see this or similar, but not necessarily identical language, in Claims 21 and 31).

Applicant respectfully asserts that the Eglen excerpt, as relied on by the Examiner to meet applicant's claimed "validating said licence key sent to said download source computer," simply discloses that "<u>[w]hen a ticket or coupon is downloaded</u>, the customer can <u>print</u> the ticket out with the printer 125" and that "[t]o prevent forgery, <u>the tickets and coupons can contain authentication information</u>, such as a unique serial number, bar code and/or design" (see Paragraph [0162] - emphasis added).

However, simply teaching that a ticket containing authentication information may be printed when the ticket is downloaded, does <u>not</u> meet or even suggest "validating said licence key sent to said download source computer<u> based on said transmittal of said licence key, utilizing said download source computer</u>" (see Claims 1 and 11 – emphasis added), or "validating said licence key sent to said download source computer<u> based on receipt of said licence key at said download source computer, utilizing said download source computer</u>" (see Claims 21 and 31 – emphasis added), as claimed. Simply nowhere in the excerpt from Eglen relied on by the Examiner is there any disclosure of "validating

said licence key...utilizing said download source computer," in the manner claimed by applicant.

Since at least the third element of the *prima facie* case of obviousness have not been met, especially in view of the amendments made hereinabove, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Further, applicant respectfully asserts that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 4 et al., the Examiner has relied on Paragraph [0162] from Eglen to make a prior art showing of applicant's claimed technique "wherein said receipt of said data indicating sale of said licence ticket validates said licence key associated with said licence ticket such upon subsequent receipt of said licence key at said download source computer said licence key will be treated as valid." Specifically, the Examiner has argued that "[a]s described, the serial number is either a valid number issued or fraudulent."

Applicant respectfully disagrees and asserts that the excerpt from Eglen relied on by the Examiner simply teaches that "[w]hen a ticket or coupon is downloaded, the customer can print the ticket out with the printer 125" and that "[t]o prevent forgery, the tickets and coupons can contain authentication information, such as a unique serial number, bar code and/or design" (see Paragraph [0162] - emphasis added). Thus, Eglen does not teach that "the serial number is either a valid number issued or fraudulent," as suggested by the Examiner, but instead only discloses that to prevent forgery, the tickets and coupons can contain authentication information. To this end, Eglen's mere disclosure of tickets containing authentication information does not meet applicant's claimed technique "wherein said receipt of said data indicating sale of said licence ticket validates said licence key associated with said licence ticket such upon subsequent receipt of said licence key at said download source computer said licence key will be treated as valid" (emphasis added), as applicant specifically claims.

Again, since at least the third element of the *prima facie* case of obviousness has not been met, especially in view of the amendments made hereinabove, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings to the Examiner's attention the subject matter of new Claim 45 below, which is added for full consideration:

"wherein the licence key is only enabled to be used to validate said download of said computer program product when said data indicating sale of said licence ticket is received by said supplier" (see Claim 45).

Again, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Therefore, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P490).

Respectfully submitted,
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